U.S. Department of Justice

Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

JCC:LMG
90-11-3-608A

Washington, D.C. 20530

April 9, 1993

VIA OVERNIGHT MAIL

The Honorable James L. Foreman
Chief Judge
United States District Court for the
Southern District of Illinois
750 East Missouri Avenue
East St. Louis, Illinois 62202

Re: United States v. NL Industries, Inc., et al.
Civ. Action No: 91-578-JLF
DOJ No: 90-11-3-608A

Dear Judge Foreman:

This letter is in response to the Defendants' letter to the Court on March 16, 1993. After reviewing the Defendants' response to the United States' proposal to allow additional administrative development concerning the residential soil cleanup standard, the United States again concludes that Defendants' response is unreasonable and inconsistent with CERCLA.

The Defendants have attached several unacceptable "conditions" to the United States' proposal. The United States' proposal is devoid of any conditions, provides a reasonable solution to the current controversy, and is consistent with CERCLA. Simply put, the United States' proposal i) will obey the mechanisms prescribed for selection of remedies at Superfund Sites in the NCP, and ii) will go beyond CERCLA and the NCP public participation requirements.

The Defendants demand that the administrative process be reopened to evaluate the entire remedy. This would include portions of the remedy that no party, including the intervening parties, is disputing. This demand is unnecessary and unacceptable.

The Defendants also require that U.S. EPA replace its most knowledgeable employees assigned to the NL Site with new employees. This is both illogical and excessively time consuming. The employees that Defendants allege are biased are not the persons responsible for making remedy selection decisions under CERCLA. That authority is vested in the Regional Administrator of U.S. EPA.[1] At no time have the defendants cast their erroneous bias allegations against the Regional Administrator.

The Defendants also require that the United States dismiss its penalty claim against the Defendants. This self-serving requirement would gut Congress' intent to penalize responsible parties who refuse to clean up hazardous waste sites.[2] Any issues concerning penalties should, as ordered by this Court in the Case Management Order, be addressed in Phase III of this action.

Finally, in order to accommodate the Defendants' concerns, the United States will structure the comment period so as to permit a fair opportunity for the public to comment on the applicability and effect of the Granite City Health Study.

The United States agrees that another status conference will be helpful. Prior to that conference, the United States will contact the Defendants in the hopes of resolving these issues.

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[1] The President has delegated most of the authority for administering CERCLA to the Administrator of U.S. EPA. Exec. Order No. 12316, 46 Fed. Reg. 42237 (Aug. 29, 1981), as amended by Exec. Order No. 12418, 48 Fed. Reg. 20891 (May 5, 1983) and Exec. Order No. 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987). Much of that authority has been further delegated to the Regional Administrators.

[2] The Defendants also require that the rapid response action, scheduled to proceed on April 12, 1993, should be delayed pending resolution of Defendants' challenge to the remedy. Defendants' requirement is expressly prohibited by CERCLA. See Section 113(j)(3), 42 U.S.C. § 9613(j)(3).

Sincerely,

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cc: All Counsel of Record